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6                   **IN THE UNITED STATES DISTRICT COURT**  
7                   **FOR THE DISTRICT OF ARIZONA**

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9                   United States of America,  
10                   Plaintiff,  
11                   v.  
12                   Matthew Tyler Carpenter,  
13                   Defendant.

14                   No. CR-23-08059-001-PCT-DWL

**ORDER**

15                   Sentencing in this matter is scheduled for July 28, 2025. Defendant has filed an  
16                   objection to the presentence report (“PSR”), with which the government concurs, but the  
17                   Probation Office recommends overruling the objection. The purpose of this order is to  
18                   provide some additional observations regarding the disputed issue, which the parties should  
19                   be prepared to address at sentencing.

20                   As background, Defendant was indicted on one count of being a felon in possession  
21                   of a firearm, in violation of 18 U.S.C. § 922(g)(1). (Doc. 1.) The indictment alleges that  
22                   the offense took place on September 17, 2019 and involved “a Remington Model 870 12-  
23                   gauge shotgun bearing serial number RS70468Z.” (*Id.*) Defendant has now pleaded guilty  
24                   to that offense. (Doc. 30.) In the factual basis of his plea agreement, Defendant admits  
25                   that he “personally controlled and handled” the aforementioned Remington shotgun on  
26                   September 17, 2019. (*Id.* at 9.)

27                   The applicable guideline for a violation of 18 U.S.C. § 922(g)(1) is USSG § 2K2.1.  
28                   Under USSG § 2K2.1(a)(6), the default base offense level for this offense is 14. However,

1 under the “Cross Reference” provision of USSG § 2K2.1(c)(1)(A), “[i]f the defendant used  
 2 or possessed any firearm . . . cited in the offense of conviction in connection with the  
 3 commission or attempted commission of another offense, or possessed or transferred a  
 4 firearm . . . cited in the offense of conviction with knowledge or intent that it would be  
 5 used or possessed in connection with another offense, apply . . . §2X1.1 (Attempt,  
 6 Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is  
 7 greater than that determined above.”

8       Although the factual basis of the plea agreement is quite narrow and only admits to  
 9 the facts necessary to support the felon-in-possession charge, the “Offense Conduct”  
 10 portion of the PSR provides many more background details surrounding the offense. The  
 11 PSR explains that on September 17, 2019, Defendant and another man, L.B., entered the  
 12 hogan of a third man, E.D.D. (Doc. 53 ¶ 10.) This was a “home invasion.” (*Id.* ¶¶ 6, 13,  
 13 164.)<sup>1</sup> Either Defendant or L.B. was carrying a box containing a shotgun as they entered  
 14 the hogan. (*Id.* ¶¶ 10, 17, 18.) It is undisputed that, during a subsequent melee, E.D.D.  
 15 was shot in the abdomen at close range with the shotgun, resulting in significant injuries  
 16 that eventually required hospitalization. (*Id.* ¶¶ 10, 11, 18.) It is also undisputed that  
 17 E.D.D. pulled out his own handgun and fatally shot L.B. (*Id.* ¶¶ 7, 10, 12.) However, the  
 18 identity of the person who shot E.D.D. with the shotgun is disputed—although E.D.D. has  
 19 repeatedly identified Defendant as the shooter (*id.* ¶¶ 10, 18, 23), E.D.D. has also provided  
 20 conflicting accounts of the encounter. As a result, the government has not charged  
 21 Defendant with any crimes other than the felon-in-possession charge and Defendant “does  
 22 not admit that he shot” E.D.D. and contends that “[i]t is just as likely that the other person  
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24       <sup>1</sup> See also *id.* ¶ 13 (“E.D.D. said that ‘they ran in on him’”); *id.* (“On the day of the  
 25 shooting, [Stevens] witnessed a vehicle pull up to the hogan where E.D.D. and her son  
 26 reside. A backseat passenger (Carpenter) exited the vehicle and approached her asking  
 27 where her son was. Stevens told Carpenter that she did not know where her son was, asked  
 28 him to leave, and indicated that she did not want any trouble. Afterward, she went into her  
 residence. A few minutes later she heard three shots.”); *id.* ¶ 17 (“Domingues said she was  
 picked up in Chinle by Carpenter and L.B. They drove to E.D.D.’s hogan on September  
 17, 2019, and she was instructed to wait outside while they took care of something. They  
 took a 3-foot-long box inside the hogan. Carpenter went inside of the hogan first. Domingues heard yelling inside the hogan after L.B. entered.”).

1 in the hogan, the deceased L.B., shot" E.D.D. (Doc. 54 at 2.)

2 Following the shootings, Defendant "exit[ed] the hogan and drop[ped] a shotgun  
 3 outside before he ran into the woods." (Doc. 53 ¶ 8.) That shotgun—the same Remington  
 4 shotgun that forms the basis for the indictment and Defendant's guilty plea—was later  
 5 recovered by law enforcement and sent to an FBI laboratory for testing. (*Id.* ¶¶ 9, 21.)  
 6 DNA from two different men was recovered from the surface of the shotgun, but it is  
 7 unlikely that Defendant was one of the contributors. (*Id.* ¶ 21.)

8 Based on these facts, the PSR concludes that the cross reference under USSG  
 9 § 2K2.1(c) should apply and that Defendant's base offense level should be 24, rather than  
 10 14. The PSR provides the following explanation for this determination:

11 Pursuant to the cross reference at USSG §2K2.1(c)(1)(A), USSG §2X1.1 is  
 12 to be used because the defendant possessed the firearm in the count of  
 13 conviction in connection with another offense, and the other offense results  
 14 in a higher offense level. As the substantive offense is aggravated assault,  
 15 the base offense level and all adjustments from USSG §2A2.2 are used to  
 16 establish the base offense level. Pursuant to the cross reference at  
 17 §2K2.1(c)(1)(A), 2A2.2 is used to determine the offense level because it  
 18 results in a higher offense level and the firearm is cited in the offense of  
 19 conviction. The base offense level is 14. USSG §§2A2.2(a) and  
 20 2K2.1(c)(1)(A). Five levels were added because a firearm was discharged.  
 21 Specifically, the defendant shot E.D.D. with a Remington Model 840. USSG  
 22 §2A2.2(b)(2)(A). Seven levels could have been added because the victim  
 23 sustained permanent or life-threatening bodily injury. However, the  
 24 cumulative adjustments from application of subdivisions (2) and (3) shall not  
 25 exceed 10; therefore, five levels were added. Specifically, the victim  
 26 sustained multiple bowel perforations, a significant tissue loss in his  
 27 abdomen, and fractured ribs with a loss of portions of his ribs. During  
 28 surgery, portions of his small intestine were removed, his colon was resected,  
 and his remaining bowel was joined after his sigmoid colon was removed  
 during a colectomy. USSG §2A2.2(b)(3)(C).

(*Id.* ¶ 26.)

Unfortunately, the plea agreement in this case contains a Rule 11(c)(1)(C) stipulation "that U.S.S.G. § 2K2.1(c) (Cross Reference) shall not apply." (Doc. 30 at 2.) Thus, if the Court were to accept the PSR, it would need to reject the plea agreement (which

1 also contains a stipulated sentencing cap of 24 months, far below the PSR's calculated  
 2 Guidelines range of 77-96 months) and give Defendant an opportunity to withdraw his  
 3 guilty plea.

4 Both parties object to the PSR's determination that the § 2K2.1(c) cross reference  
 5 should apply. According to Defendant, the cross reference is inapplicable because there is  
 6 insufficient evidence to establish that he was the person who shot E.D.D. with the shotgun:  
 7 "The PSR states that Matthew Carpenter shot E.D.D. This is not conclusive from the police  
 8 reports. The police reports and interviews have differing statements from victim E.D.D.  
 9 and other witnesses. There is not scientific or physical evidence that supports a conclusion  
 10 that Mr. Carpenter shot E.D.D. Mr. Carpenter is not charged with aggravated assault or  
 11 any other crime related to shooting E.D.D. Defense submits that there is not evidence to  
 12 state that Mr. Carpenter shot E.D.D. in order to use that against him in guideline  
 13 calculations, even at a lower burden of proof." (Doc. 46 at 1-2.)<sup>2</sup>

14 Similarly, the government argues that "Carpenter has not been charged with any  
 15 other offenses related to this incident. The only people who know what happened inside  
 16 the hogan are Carpenter and E.D.D., as L.B. is deceased. E.D.D. made statements to police  
 17 (which are correctly summarized in the PSR), but Carpenter disputes his accounts.  
 18 Resolving this issue would require the Court to make credibility determinations and factual  
 19 findings based on incomplete and possibly inconsistent information. Upon review of all  
 20 the evidence and the circumstances of this case, the United States declines to pursue  
 21 application of the cross-reference." (Doc. 49 at 2.)

22 In the addendum to the PSR, the Probation Officer recommends overruling this  
 23 objection because "[a] probation officer is an independent investigator and not bound by

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24       <sup>2</sup> In his sentencing memo, Defendant adds: "[Defendant] does not admit that he shot  
 25 E.D. He asks the Court to consider some additional information. The PSR states that E.D.  
 26 identified Carpenter in a line up as the person who shot him. It omits that E.D. also stated  
 27 that he could not identify anyone in that line up. In the course of investigating this matter,  
 28 E.D. changes his story and does not provide a reliable narrative. E.D. has significant  
 criminal history . . . [Defendant] was not charged with shooting, assault, or any other  
 such charge. It is just as likely that the other person in the hogan, the deceased L.B., shot  
 E.D. There does not exist a preponderance of evidence that Matthew shot E.D. and that is  
 not relevant conduct to be considered in this sentencing." (Doc. 54 at 2.)

1 the stipulations contained in the plea agreement. The probation officer's objective analysis  
 2 of the available information indicates that E.D.D. was shot twice by a shotgun. E.D.D.  
 3 reported that [Defendant] was the individual who shot him, and the victim also positively  
 4 identified the defendant in a photographic lineup. Additionally, when [Defendant] fled the  
 5 scene, witnesses saw him drop a shotgun outside the victim's residence. Notwithstanding  
 6 the results of DNA testing, the shotgun to which the defendant has pleaded guilty to  
 7 possessing was found outside the hogan. A preponderance of the evidence indicates that  
 8 the defendant did shoot E.D.D.; therefore, the cross-reference is applicable, and the offense  
 9 level computation was not revised." (Doc. 53 at 45-46.)

10 Having reviewed the parties' submissions and the Probation Officer's response, the  
 11 Court is tentatively inclined to overrule the objection. As an initial matter, the cross  
 12 reference may apply even though Defendant was only indicted on the felon-in-possession  
 13 count and has not been charged with any other crimes. *United States v. Humphries*, 961  
 14 F.2d 1421, 1422 (9th Cir. 1992) (rejecting defendant's argument that "the term 'another  
 15 offense' in the phrase 'in connection with commission or attempted commission of another  
 16 offense' means another offense of which the defendant was convicted, rather than merely  
 17 conduct that would constitute such an offense" and affirming application of cross reference  
 18 even though the defendant "was not convicted of aggravated assault") (citation omitted).

19 On the merits, the parties place heavy emphasis on the factual dispute over whether  
 20 Defendant or L.B. was the person who ultimately shot E.D.D. with the shotgun.<sup>3</sup> However,  
 21 it is not clear to the Court that the applicability of cross reference turns on this issue. As  
 22 noted, § 2K2.1(c)(1) applies "[i]f the defendant used or possessed any firearm . . . cited in  
 23 the offense of conviction in connection with the commission or attempted commission of

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24 <sup>3</sup> To the extent Defendant seeks to invoke E.D.D.'s criminal history in the course of  
 25 raising this factual dispute, that approach is misplaced. *United States v. Canady*, 578 F.3d  
 26 665, 673 (7th Cir. 2009) (affirming application of cross reference in felon-in-possession  
 27 case, where the defendant was accused of using the illegally possessed firearm to shoot  
 28 Vance during a home invasion and argued that "[a]lthough Vance identified [defendant] as  
 the shooter, . . . Vance's statements to the police were unreliable," and emphasizing in a  
 parenthetical that a "sentencing judge [is] not precluded from relying on testimony from  
 witnesses who had impure motives, criminal histories, and a record of telling lies") (citation  
 omitted).

1 another offense, or possessed or transferred a firearm . . . cited in the offense of conviction  
2 with knowledge or intent that it would be used or possessed in connection with another  
3 offense.” Here, the “another offense” identified in the PSR is aggravated assault. Thus,  
4 so long as Defendant possessed the shotgun “in connection with the commission or  
5 attempted commission” of the aggravated assault of E.D.D. or “with knowledge or intent  
6 that it would be used or possessed in connection with” the aggravated assault of E.D.D.,  
7 the cross reference applies. *See also* USSG §2K2.1, application note 14(A) (“Subsections  
8 (b)(6)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of  
9 facilitating, another felony offense or another offense, respectively.”).

10 Those standards appear to be satisfied here. Defendant and L.B. jointly entered  
11 E.D.D.’s hogan with bad intentions, as part of a home invasion, and Defendant possessed  
12 the shotgun at least at some point during the encounter, as either Defendant or L.B. was  
13 carrying a box containing the shotgun when they entered the hogan, Defendant was seen  
14 dropping the shotgun in E.D.D.’s yard immediately after the shooting, and Defendant  
15 admits in his plea agreement that he “personally controlled and handled” the shotgun on  
16 the date of the shooting. In other words, even assuming that L.B. was the shooter,  
17 Defendant still possessed the shotgun “in connection with the commission of” L.B.’s  
18 aggravated assault of E.D.D. *See, e.g., United States v. Dalmau*, 2017 WL 3261719, \*6  
19 (W.D.N.Y. 2017) (“[T]he person who shot Ortiz-Maldonado was one of two people: the  
20 Defendant or Lorenzi. The Defendant was therefore either the driver of the Yukon, in  
21 which case he would almost certainly had to have seen, or been aware of, the murder so  
22 that he could quickly drive away; or he was, in fact, the shooter. Thus, a preponderance of  
23 the evidence shows that the Defendant knew that the gun found in the Yukon—a gun he  
24 admitted possessing—was used to murder Ortiz-Maldonado. . . . [T]he narrow question  
25 before the Court is simply whether the § 2K2.1(c)(1)’s cross-reference applies in this case.  
26 Answering that question does not require the Court to find that the Defendant murdered  
27 Ortiz-Maldonado. Rather, to answer that question it is sufficient to find only that Ortiz-  
28 Maldonado was murdered and that the Defendant ‘possessed’ a firearm ‘in connection

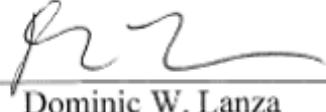
1 with'—that is, a firearm that 'facilitated'—Ortiz-Maldonado's murder. The Court  
2 therefore need not make any finding as to whether the Defendant, rather than Lorenzi,  
3 murdered Ortiz-Maldonado on January 5, 2014."); *United States v. Jackson*, 662 F. App'x  
4 310, 318 (5th Cir. 2016) (affirming application of cross reference where "[t]he gun seen in  
5 the video is the one at issue in the felon in possession count" and "[t]he shooting takes  
6 place mere seconds after [the defendant] hands the gun to Dokes and walks off screen").

7 At sentencing, the parties should be prepared to address these observations.  
8 Additionally, if the Court overrules the objection, which will necessarily require the Court  
9 to reject the plea agreement, the Court will then follow the procedure set forth in Rule  
10 11(c)(5) of the Federal Rules of Criminal Procedure, by personally advising Defendant that  
11 the Court is not required to follow the plea agreement, by giving Defendant the opportunity  
12 to withdraw his guilty plea, and by personally advising Defendant that if the plea is not  
13 withdrawn, the Court may dispose of the case less favorably toward Defendant than the  
14 plea agreement contemplated.

15 Dated this 25th day of July, 2025.

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Dominic W. Lanza  
United States District Judge